

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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For further information, please call: (512) 475-0387

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

#### CHAPTER 362. DEFINITIONS

##### 40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning definitions in that section. The amendment will clarify existing definitions with regard to and add new definitions related to telehealth. Definitions have been added for "face-to-face," "on site," and "telehealth." The definitions for "direct contact" and "first available examination" have been removed. The section has also been reorganized so that the definitions appear in alphabetical order; grammatical revisions have been made, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Welss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§362.1. *Definitions.*

The following words, terms, and phrases, when used in this part shall have the following meaning, unless the context clearly indicates otherwise.

(1) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.

(2) Act--The Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454 of the Occupations Code.

(3) AOTA--American Occupational Therapy Association.

(4) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) Certified Occupational Therapy Assistant (COTA®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR® or OT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it by maintaining certification with NBCOT.

(7) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) A fine not to exceed \$4,000;

(B) Confinement in jail for a term not to exceed one year; or

(C) Both such fine and imprisonment (Vernon's Texas Codes Annotated Penal Code §12.21).

(8) Client--The entity that receives occupational therapy; also may be known as patient. Clients may be individuals (including others involved in the individual's life who may also help or be served indirectly such as a caregiver, teacher, parent, employer, spouse), groups, or populations (i.e., organizations, communities).

(9) Complete Application--Application [Notarized application] form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(10) Complete Renewal--Contains renewal fee, renewal form with [signed] continuing education submission form [affidavit], home/work address(es) and phone number(s), [and] jurisprudence examination with at least 70% of questions answered correctly, and all other required documents.

(11) Continuing Education Committee--Reviews and makes recommendations to the Board [board] concerning continuing education requirements and special consideration requests.

(12) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

Direct Contact--Refers to contact with the client which is face-to-face in person.

(13) Endorsement--The process by which the Board [board] issues a license to a person currently licensed in another state[, the District of Columbia,] or territory of the United States that maintains professional standards considered by the Board [board] to

be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(14) Evaluation--The process of planning, obtaining, documenting and interpreting data necessary for intervention. This process is focused on finding out what the client wants and needs to do and on identifying those factors that act as supports or barriers to performance.

(15) Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification examination [Examination] given by the National Board for Certification in Occupational Therapy (NBCOT).

(16) Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(17) Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(18) Face-to-face--Refers to contact with the client which is visual and auditory, real time interaction via electronic/communications technology methods or physical presence.

[(18) First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.]

(19) Intervention--The process of planning and implementing specific strategies based on the client's desired outcome, evaluation data and evidence, to effect change in the client's occupational performance leading to engagement in occupation to support participation.

(20) Investigation Committee--Reviews and makes recommendations to the Board [board] concerning complaints and disciplinary actions regarding licensees and facilities.

(21) Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the Board. [board.]

(22) Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners Rules. [rules.] This test is an open book examination with multiple choice and/or [or] true-false questions. The passing score is 70%.

(23) License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(24) Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(25) NBCOT--National Board for Certification in Occupational Therapy.

(26) Non-licensed Personnel--OT Aide or OT Orderly or other person not licensed by this Board [board] who provides support services to occupational therapy practitioners and whose activities require on-the-job training and on-site, close personal supervision.

(27) Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which do [does] not require the routine intervention of a physician.

(28) Occupation--Activities of everyday life, named, organized, and given value and meaning by individuals and a culture. Occu-

pation is everything people do to occupy themselves, including looking after themselves, enjoying life and contributing to the social and economic fabric of their communities.

(29) Occupational Therapist (OT)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas. This definition includes an Occupational Therapist or one who is designated as an Occupational Therapist, Registered (OTR®).

(30) Occupational Therapist, Registered (OTR®)--An individual who uses this term must hold a valid regular or provisional license to practice or represent self as an Occupational Therapist in Texas by maintaining registration through NBCOT.

(31) Occupational Therapy Assistant (OTA)--An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).

(32) Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(33) [(34)] Occupational Therapy Practice--Includes:

(A) Methods or strategies selected to direct the process of interventions such as:

(i) Establishment, remediation, or restoration of a skill or ability that has not yet developed or is impaired.

(ii) Compensation, modification, or adaptation of activity or environment to enhance performance.

(iii) Maintenance and enhancement of capabilities without which performance in everyday life activities would decline.

(iv) Health promotion and wellness to enable or enhance performance in everyday life activities.

(v) Prevention of barriers to performance, including disability prevention.

(B) Evaluation of factors affecting activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:

(i) Client factors, including body functions (such as neuromuscular, sensory, visual, perceptual, cognitive) and body structures (such as cardiovascular, digestive, integumentary, genitourinary systems).

(ii) Habits, routines, roles and behavior patterns.

(iii) Cultural, physical, environmental, social, and spiritual contexts and activity demands that affect performance.

(iv) Performance skills, including motor, process, and communication/interaction skills.

(C) Interventions and procedures to promote or enhance safety and performance in activities of daily living (ADL), instrumental activities of daily living (IADL), education, work, play, leisure, and social participation, including:[:]

(i) Therapeutic use of occupations, exercises, and activities.

(ii) Training in self-care, self-management, home management and community/work reintegration.

(iii) Development, remediation, or compensation of physical, cognitive, neuromuscular, sensory functions and behavioral skills.

(iv) Therapeutic use of self, including one's personality, insights, perceptions, and judgments, as part of the therapeutic process.

(v) Education and training of individuals, including family members, caregivers, and others.

(vi) Care coordination, case management and transition services.

(vii) Consultative services to groups, programs, organizations, or communities.

(viii) Modification of environments (home, work, school, or community) and adaptation of processes, including the application of ergonomic principles.

(ix) Assessment, design, fabrication, application, fitting and training in assistive technology, adaptive devices, and orthotic devices, and training in the use of prosthetic devices.

(x) Assessment, recommendation, and training in techniques to enhance functional mobility including wheelchair management.

(xi) Driver rehabilitation and community mobility.

(xii) Management of feeding, eating, and swallowing to enable eating and feeding performance.

(xiii) Application of physical agent modalities, and use of a range of specific therapeutic procedures (such as wound care management; techniques to enhance sensory, perceptual, and cognitive processing; manual therapy techniques) to enhance performance skills.

[(32) Occupational Therapy Assistant (OTA)—An individual who holds a valid regular or provisional license to practice or represent self as an Occupational Therapy Assistant in Texas, and who is required to be under the continuing supervision of an OT. This definition includes an individual who is designated as a Certified Occupational Therapy Assistant (COTA®) or an Occupational Therapy Assistant (OTA).]

[(33) Occupational Therapy Plan of Care—A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.]

(34) Occupational Therapy Practitioners—Occupational Therapists[,] and Occupational Therapy Assistants licensed by this Board. [board.]

(35) On-Site--Refers to when the client, the occupational therapy practitioner(s), and any non-licensed personnel supervised by an occupational therapy practitioner are present at the same time with visual and auditory, real time interactive contact via electronic/communications technology methods or physical presence.

(36) [(35)] Outcome--The focus and targeted end objective of occupational therapy intervention. The overarching outcome of occupational therapy is engagement in occupation to support participation in context(s).

(37) [(36)] Place(s) of Business--Any facility in which a licensee practices.

(38) [(37)] Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant to clients located in Texas at the time of the provision of occupational therapy services. Only a person holding a license from TBOTE may practice occupational therapy in Texas, and the site of practice is the location in Texas where the client is located at the time of the provision of services.

[(38) Accredited Educational Program--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the Accreditation Council for Occupational Therapy Education (ACOTE) of the American Occupational Therapy Association.]

(39) Rules--Refers to the TBOTE Rules.

(40) Screening--A process used to determine a potential need for occupational therapy interventions, educational and/or other client needs. Screening information may be compiled using observation, client records, the interview process, self-reporting, and/or other documentation.

(41) Telehealth--A mode of service delivery through the use of visual and auditory, real time interactive electronic information or communications technologies to support clinical health care, client and provider health-related education, public health, and supervision of health-care providers. As a mode of service delivery, telehealth is on-site contact with the client and the occupational therapy practitioner(s). Telehealth refers only to the practice of occupational therapy by occupational therapy practitioners who are licensed by this Board with clients who are located in Texas at the time of the provision of occupational therapy services. Also may be known as other terms including but not limited to telepractice, telemedicine, telecare, telerehabilitation, and e-health services.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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For further information, please call: (512) 305-6900

## CHAPTER 367. CONTINUING EDUCATION

### 40 TAC §367.1, §367.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §367.1, concerning continuing education, and §367.3, concerning the continuing education audit. The proposed amendment to §367.1 clarifies requirements for continuing education and adds the provision that each continuing education activity may be counted only one time in two renewal cycles or a total of four years. The proposed amendment to §367.3 clarifies requirements for the audit and for continuing education documentation. In addition, the proposal adds that the name of the authorized signer must be included on the continuing education documentation and that when continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider

noting the equivalence of the units or credits in terms of contact hours.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

#### §367.1. Continuing Education.

(a) The Act mandates licensee participation in a continuing education program for license renewal. All continuing education must be directly relevant to the profession of occupational therapy and meet the definition of Type 1 or Type 2 as outlined in this section. The licensee is solely responsible for keeping accurate documentation of all continuing education requirements and for selecting continuing education as per the requirements in this chapter.

(b) All licensees must complete a minimum of 30 hours of continuing education every two years during the period of time the license is current in order to renew the license[,] and must provide this information as requested.

(c) Those renewing a license more than 90 days late must submit proof of continuing education for the renewal.

##### (d) Types of Continuing Education.

(1) A minimum of 15 hours of continuing education must be in skills specific to occupational therapy practice with [patients or] clients hereafter referred to as Type 2.

(A) Type 2 courses teach occupational therapy evaluation, assessment, intervention or prevention and wellness with [patients or] clients.

(B) All continuing education hours may be in Type 2, but no less than 15 hours of Type 2 is acceptable.

(2) General information hereafter referred to as Type 1 continuing education is relevant to the profession of occupational therapy. Examples include but are not limited to: supervision, education, documentation, pharmacology, quality improvement, administration, reimbursement and other occupational therapy related subjects.

(c) Each [Specific] continuing education activity [educational activities] may be counted only one time in two renewal cycles or a

total of four years. [in the licensee's career unless content has been updated or revised.]

(f) Effective January 1, 2003, Type 1 and Type 2 educational activities approved or offered by the American Occupational Therapy Association or the Texas Occupational Therapy Association are pre-approved by the Board. [board.] The Board [board] will review its approval process and continuation thereof for educational activities by January 2005 and at least once each five-year period thereafter.

(g) Licensees are responsible for choosing Type 1 or Type 2 CE according to the definitions in this section.

#### §367.3. Continuing Education Audit.

(a) The Board [board] shall select for audit a random sample of licensees. The audit will cover a period for which the licensee has already completed the continuing education requirement.

(b) Licensees randomly selected for the audit must provide to TBOTE appropriate documentation within 30 days of notification. Audit documentation submitted must be identified by the licensee to specify whether it is [they are] Type 1 or Type 2.

(c) The licensee is solely responsible for keeping accurate documentation of all continuing education requirements. Continuing education documentation must be maintained for two years from the date of the last renewal for auditing purposes, or a total of four years.

(d) Continuing education documentation includes, but is not limited to: an official transcript, AOTA self-study completion certificates, copies of official sign-in or attendance sheets, course certificates of attendance, and certificates of completion.

(e) Documentation must identify the licensee by name [and license number], and must include the date and title of the course, the name and signature of the authorized signer, and the number of [CEUs or] contact hours awarded for the course. When continuing education units (CEUs), professional development units (PDUs), or other units or credits are listed on the documentation, such must be accompanied by documentation from the continuing education provider noting the equivalence of the units or credits in terms of contact hours.

(f) Knowingly providing false information or failure to respond during the audit process or the renewal process is grounds for disciplinary action.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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## CHAPTER 369. DISPLAY OF LICENSES

### 40 TAC §369.1, §369.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §369.1 and §369.2, concerning display of licenses and changes of name or address. The amendments will clarify existing policies with regard to the display of licenses and changes of name and address. A change to §369.1 will al-

low for new licensees, upon verification of their licensure status and expiration date on the Board's verification page, to provide services. Changes to the section also clarify the process to request a replacement license. Changes to §369.2 clarify name changes and the name of the section has been changed to indicate that the section refers to changes of name or address. The proposed amendments include cleanups and grammatical revisions as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

**§369.1. Display of Licenses.**

(a) Licenses must be displayed in accordance with the Act, §454.214.

(b) The original license must be prominently displayed in the licensee's principal place of business as designated by the licensee. The wallet-sized license must be carried by the licensee when in other practice settings. Reproduction of the original license is only authorized for institutional file purposes and not for public display.

(c) A new licensee with a regular or temporary license may provide occupational therapy services according to the terms of the license upon online verification of current licensure and license expiration date from the Board's license verification page. The Board will maintain a secure resource for verification of license status and expiration date on its website.

(d) [(e)] A licensee shall not make any alteration(s) on a license.

(e) The Board may issue a copy of a license to replace one lost or destroyed upon receipt of a written request and the appropriate fee from the licensee. The Board may issue a replacement copy of a license to reflect a name change upon receipt of a written request, the appropriate fee, and a copy of the legal document (such as a marriage license, court decree, or divorce decree) evidencing the name change.

**§369.2. Changes of Name or Address [of Licensees].**

(a) A licensee or applicant shall notify the Board [board] in writing of changes in name, residential address, business address, mailing address, email address, [and/or primary business address] and/or

supervisor within 30 days of such change(s). A copy of the legal document (such as a marriage license, court decree, or divorce decree) evidencing a change in name must be submitted by the licensee or applicant with any written notification of [in] a change in name. To request a replacement copy of the license to reflect a name change, refer to §369.1 of this title (relating to Display of Licenses).

(b) Failure to provide the changes requested in subsection (a) of this section may cause a licensee to be subject to disciplinary action.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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## CHAPTER 372. PROVISION OF SERVICES

### 40 TAC §372.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §372.1, concerning the provision of services. The amendment will clarify the existing rule in general and with regard to telehealth and will add the requirement that the occupational therapist who screens, evaluates, or implements the plan of care is responsible for determining the need for the physical presence of an occupational therapy practitioner during any interactions with clients. The amendment, furthermore, clarifies that occupational therapists may provide consultation or monitored services or screen or evaluate the client to determine the need for occupational therapy services without a referral and that an occupational therapist or occupational therapy assistant may perform a screening, consultation, or monitored services. The amendment also adds that an occupational therapist who performs the initial evaluation must be physically present with the client during the initial evaluation process and that devices that are in sustained skin contact with the client require the physical presence of the occupational therapy practitioner for any initial or subsequent applications and/or monitoring of the device. The amendment also clarifies the requirement that an occupational therapy assistant must be able to contact an occupational therapist who is available to answer questions about the client's intervention at the time of the provision of occupational therapy services. The proposed amendment includes cleanups and grammatical revisions, as well.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline has also determined that for each of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendment may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) no later than 30 days from the date that this proposed amendment is published in the *Texas Register*.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

*§372.1. Provision of Services.*

(a) The occupational therapist who screens, evaluates, writes, or implements the plan of care is responsible for determining the need for the physical presence of an occupational therapy practitioner during any interactions with clients.

(b) ~~[(a)]~~ Medical Conditions.

(1) Occupational therapists may provide consultation or monitored services or screen or evaluate the client [patient/client] to determine the need for occupational therapy services without a referral.

(2) Intervention for a medical condition by an occupational therapy practitioner requires a referral from a licensed referral source.

(3) The referral may be an oral or signed written order. The occupational therapy practitioner must ensure that all oral orders are followed with a signed written order.

(4) If a written referral signed by the referral source is not received by the third intervention [treatment] or within two weeks from the receipt of the oral referral, whichever is later, the occupational therapist must have documented evidence of attempt(s) to contact the referral source for the written referral (e.g., registered letter, fax, certified letter, email, [return receipt,] etc.). The occupational therapist must exercise professional judgment to determine cessation or continuation of intervention [treatment] without [with] a receipt of the written referral.

(c) ~~[(b)]~~ Non-Medical Conditions.

(1) Consultation, monitored services, screening, and evaluation for need of services may be provided without a referral.

(2) Non-medical conditions do not require a referral. However, a referral must be requested at any time during the evaluation or intervention [treatment] process when necessary to ensure [insure] the safety and welfare of the client. [consumer.]

(d) Screening, Consultation, and Monitored Services. A screening, consultation, or monitored services may be performed by an occupational therapy practitioner.

~~[(e)]~~ Screening. A screening may be performed by an occupational therapy practitioner.]

(e) ~~[(d)]~~ Evaluation.

(1) Only an occupational therapist may perform an initial [the] evaluation or any re-evaluations.

(2) An occupational therapy plan of care must be based on an occupational therapy evaluation.

(3) The occupational therapist who performs the initial evaluation must be physically present with the client during the initial evaluation process.

~~[(3)]~~ The occupational therapist must have face-to-face, real time interaction with the patient or client during the evaluation process.]

(4) The occupational therapist may delegate to an occupational therapy assistant or temporary licensee the collection of data for the assessment. The occupational therapist is responsible for the accuracy of the data collected by the assistant.

(f) ~~[(e)]~~ Plan of Care.

(1) Only an occupational therapist may initiate, develop, modify or complete an occupational therapy plan of care. It is a violation of the OT Practice Act for anyone other than the evaluating or treating occupational therapist to dictate, or attempt to dictate, when occupational therapy services should or should not be provided, the nature and frequency of services that are provided, when the client [patient] should be discharged, or any other aspect of the provision of occupational therapy as set out in the OT Act and Rules.

(2) The occupational therapist and an occupational therapy assistant may work jointly to revise the short-term goals, but the final determination resides with the occupational therapist. Revisions to the plan of care and goals must be documented by the occupational therapist and/or occupational therapy assistant to reflect revisions at the time of the change.

(3) An occupational therapy plan of care may be integrated into an interdisciplinary plan of care, but the occupational therapy goals or objectives must be easily identifiable in the plan of care.

(4) Only occupational therapy practitioners may implement the written plan of care once it is completed by the occupational therapist.

(5) Only the occupational therapy practitioner may train non-licensed personnel or family members to carry out specific tasks that support the occupational therapy plan of care.

(6) The occupational therapist is responsible for determining whether intervention is needed and if a referral is required for occupational therapy intervention.

(7) The occupational therapy practitioners must have face-to-face, real time interaction with the [patient or] client during the intervention process.

(8) Devices (such as wheelchair positioning devices, splints, therapeutic tape, etc.) that are in sustained skin contact with the client require the physical presence of the occupational therapy practitioner for any initial or subsequent applications and/or monitoring of the device.

(9) ~~[(8)]~~ Except where otherwise restricted by rule, the supervising occupational therapist may only delegate to an occupational therapy assistant or temporary licensee tasks that they both agree are within the competency level of that occupational therapy assistant or temporary licensee.

(g) ~~[(f)]~~ Documentation.

(1) The client's [patient's/client's] records include the medical referral, if required, [;] and the plan of care. The plan of care includes the initial examination and evaluation; the goals and any updates or change of the goals; the documentation of each intervention session by the OT or OTA providing the service; progress notes and [;] any re-evaluations, if required; any written communication; and the discharge documentation.

(2) The licensee providing occupational therapy services must document for each intervention session. The documentation

must accurately reflect the intervention, decline of intervention, and/or modalities provided.

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services.

{(3) The occupational therapy assistant must include the name of his or her available supervising occupational therapist in each intervention note. If there is not a current supervising occupational therapist, the occupational therapy assistant cannot intervene.}

(h) [(g)] Discharge.

(1) Only an occupational therapist has the authority to discharge clients [patients] from occupational therapy services. The discharge is based on whether the [patient or] client has achieved predetermined goals, has achieved maximum benefit from occupational therapy services, [;] or when other circumstances warrant discontinuation of occupational therapy services.

(2) The occupational therapist must review any information from the occupational therapy assistant(s), determine if goals were met or not, complete and sign the discharge documentation, and/or make recommendations for any further needs of the client [patient] in another continuum of care.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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For further information, please call: (512) 305-6900



## CHAPTER 373. SUPERVISION

### 40 TAC §§373.1 - 373.3

The Texas Board of Occupational Therapy Examiners proposes amendments to §§373.1 - 373.3, concerning supervision requirements for non-licensed personnel, temporary licensees, and occupational therapy assistants. The amendments will clarify supervision requirements in general and with regard to supervision via telehealth. The proposed amendments include grammatical revisions and cleanups as well.

The proposed amendment to §373.1 clarifies that when non-licensed personnel are assisting in the construction of adaptive/assistive equipment, the licensee must be physically present for any initial applications to the client. "Splints" has been removed from this provision as proposed changes to §372.1, concerning provision of services, include the provision that devices (such as wheelchair positioning devices, splints, therapeutic tape, etc.) that are in sustained skin contact with the client require the physical presence of the occupational therapy practitioner for any initial or subsequent applications and/or monitoring of the device.

Section 373.2 has been reorganized to clarify supervision requirements for temporary licensees and to clarify that new licensees, upon verification of their licensure status and expiration date on the Board's verification page, may provide services according to the conditions of the license. A provision has also been added requiring that occupational therapists who hold a temporary license must record their required supervision on a Supervision Record.

The proposed amendment to §373.3 reorganizes and clarifies supervision requirements for occupational therapy assistants and includes changes to required supervision hours. The amendment also clarifies the requirement that an occupational therapy assistant must be able to contact an occupational therapist who is available to answer questions about the client's intervention at the time of the provision of occupational therapy services.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amended rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline has also determined that for each of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the expansion of occupational therapy services for consumers. There will be no effect on small businesses and no anticipated economic cost to persons having to comply.

Comments on the proposed amendments may be submitted to Lea Weiss, Occupational Therapy Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701 or to [lea@ptot.texas.gov](mailto:lea@ptot.texas.gov) no later than 30 days from the date that these proposed amendments are published in the *Texas Register*.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

#### *§373.1. Supervision of Non-Licensed Personnel.*

(a) Occupational Therapists are fully responsible for the planning and delivery of occupational therapy services. They may use non-licensed personnel to extend their services; however, the non-licensed personnel must be under the supervision of an occupational therapy practitioner.

(b) [Close Personal] Supervision in this section is [implies direct,] on-site contact whereby the supervising occupational therapy licensee is able to respond immediately to the needs of the client. [patient.] This type of supervision is required for non-licensed personnel providing support services to the occupational therapy practitioners.

(c) When occupational therapy practitioners delegate occupational therapy tasks to non-licensed personnel, the occupational therapy practitioners are responsible for ensuring that this person is adequately trained in the tasks delegated.

(d) The occupational [Occupational] therapy practitioners providing the intervention [treatment] must interact with the client



[patient] regarding the client's [patient's] condition, progress, and/or achievement of goals during each intervention [treatment] session.

(e) Delegation of tasks to non-licensed personnel includes but is [it] not limited to:

- (1) routine department maintenance;
- (2) transportation of clients [patients/clients];
- (3) preparation or set up of intervention [treatment] equipment and work area;
- (4) assisting clients [patients/clients] with their personal needs during the intervention [treatment];

(5) assisting in the construction of adaptive/assistive equipment [and splints]. The licensee must be physically present [on-site and attending] for any initial applications to the client [patient];

(6) carrying out a predetermined segment or task in the client's [patient's] care for which the client [patient] has demonstrated some previous performance ability in executing the task.

(f) The Non-Licensed Personnel may not:

- (1) perform occupational therapy evaluative procedures;
- (2) initiate, plan, adjust, or modify occupational therapy procedures;
- (3) act on behalf of the occupational therapist in any matter relating to occupational therapy which requires decision making or professional judgments;

(4) write or sign occupational therapy documents in the permanent record. However, non-licensed personnel may record quantitative data for tasks delegated by the supervising occupational therapy practitioner. Any documentation reflecting activities by non-licensed personnel must identify the name and title of that person and the name of the supervising occupational therapy practitioner.

#### §373.2. Supervision of a Temporary Licensee.

(a) Requirements for all temporary licensees:

(1) A temporary licensee works under the supervision of a [regular] licensed occupational therapist who holds a regular license and [s] whose name, [and] license number, and employer information are on file on the Board's Supervision of a Temporary Licensee ["Supervision of a Temporary Licensee"] form. For each supervising occupational therapist and/or employer, the temporary licensee must submit the Supervision of a Temporary Licensee form. In this section, a supervising occupational therapist is any occupational therapist whether working full time, part time, or PRN (i.e., working on an as-needed basis), who delegates to the temporary licensee.

(2) All documentation completed by an individual holding a temporary license which becomes part of the client's [patient's/client's] permanent file [s] must be approved and co-signed by one of the supervising occupational therapist(s). [therapist:]

(3) Temporary licensees may not supervise anyone.

(4) A temporary licensee does not become a regular licensee with those privileges until the regular license can be verified as being current and its expiration date is displayed on the Board's license verification page. [is in hand:]

(b) Supervision of an occupational therapy assistant with a temporary license includes:

(1) On-the-Premises Supervision: When providing occupational therapy services, a temporary licensee must have supervision

by an occupational therapist or occupational therapy assistant who is on the premises and holds a regular license.

#### (2) Supervision Log and Supervision Hours:

(A) The temporary licensee must complete supervision hours each month, which must be recorded on the Supervision Log. The Supervision Log is kept by the temporary licensee and signed by the occupational therapist(s) when supervision is given. The occupational therapist(s) or employer may request a copy of the Supervision Log.

(B) All of the occupational therapists, whether working full time, part time, or PRN, who delegate to the temporary licensee must participate in the supervision hours, whether on a shared or rotational basis.

(C) For each employer, the temporary licensee must complete a separate Supervision Log, in addition to all other requirements.

(D) For those months when the licensee does not work as a temporary licensee, he or she shall write N/A in the Supervision Log.

(E) Supervision Logs are subject to audit by the Board.

(F) The temporary licensee is required to complete a minimum of sixteen supervision hours each month for each employer, which must include:

(i) a minimum of twelve hours of frequent communication between the supervising occupational therapist(s) and temporary licensee including, but not limited to, communication by electronic/communications technology methods, written report, and conference, including review of progress of clients assigned, plus

(ii) a minimum of four hours of interactive supervision a month during which the occupational therapist, who is physically present with the temporary licensee, directly observes the temporary licensee providing services to one or more clients.

[(1) sixteen hours of supervision a month of which at least twelve hours are through telephone, written report or conference, including the review of progress of patients/clients assigned; plus]

[(2) four or more hours of supervision a month which are face-to-face, real time supervision with the temporary licensee providing services to one or more patients/clients:]

[(3) A temporary licensee must have on-site supervision by an occupational therapist or occupational therapy assistant with a regular license when providing occupational therapy services:]

(c) Supervision of an occupational therapist with a temporary license includes [documentation regarding]:

(1) On-the-Premises Supervision: When providing occupational therapy services, a temporary licensee must have supervision by an occupational therapist who is on the premises and holds a regular license.

(2) Supervision Record and Required Supervision Communication and Encounters:

(A) The temporary licensee must receive supervision each month, which must be recorded on the Temporary Occupational Therapist Licensee Supervision Record. The Supervision Record is kept by the temporary licensee and signed by the occupational therapist(s) when supervision is given. The occupational therapist(s) or employer may request a copy of the Supervision Record.



(B) All of the occupational therapists, whether working full time, part time, or PRN, who delegate to the temporary licensee must participate in the required supervision, whether on a shared or rotational basis.

(C) For each employer, the temporary licensee must complete a separate Supervision Record, in addition to all other requirements.

(D) For those months when the licensee does not work as a temporary licensee, he or she shall write N/A in the Supervision Record.

(E) Supervision Records are subject to audit by the Board.

(F) The temporary licensee is required to complete the following supervision requirements for each employer:

(i) frequent communication between the supervising occupational therapist(s) and temporary licensee including, but not limited to, communication by electronic/communications technology methods, written report, and conference, including review of progress of clients assigned, plus

(ii) interactive encounters twice a month during which the occupational therapist, who is physically present with the temporary licensee, directly observes the temporary licensee providing services to one or more clients.

[(1) frequent communication between the supervising occupational therapist and the temporary licensee by telephone, written report or conference, including the review of progress of patients/clients assigned; plus]

[(2) encounters twice a month where the occupational therapist directly observes the temporary licensee providing services to one or more patients/clients with face-to-face, real time interaction-]

[(3) A temporary licensee must have on-site supervision by an occupational therapist with a regular license when providing occupational therapy services-]

#### §373.3. Supervision of an Occupational Therapy Assistant.

(a) An occupational therapy assistant shall provide occupational therapy services only under the supervision of an occupational therapist(s).

(b) Supervision of an occupational therapy assistant in all settings includes:

(1) Supervision Form: For each employer, the occupational therapy assistant must submit the Occupational Therapy Assistant Supervision form with the employer information and name and license number of one of the occupational therapists working for the employer who will be providing supervision.

#### (2) Supervision Log and Supervision Hours:

(A) The occupational therapy assistant must complete supervision hours each month, which must be recorded on the Supervision Log. The Supervision Log is kept by the occupational therapy assistant and signed by the occupational therapist(s) when supervision is given. The occupational therapist(s) or employer may request a copy of the Supervision Log.

(B) All of the occupational therapists, whether working full time, part time, or PRN (i.e., working on an as-needed basis), who delegate to the occupational therapy assistant must participate in the supervision hours, whether on a shared or rotational basis.

(C) For each employer, the occupational therapy assistant must complete a separate Supervision Log and must complete the specified supervision hours, in addition to all other requirements. Supervision hours for different employers may not be combined.

(D) For those months when the licensee does not work as an occupational therapy assistant, he or she shall write N/A in the Supervision Log.

(E) Supervision Logs are subject to audit by the Board.

(F) Occupational therapy assistants must complete these types of supervision per month according to the following table:

(i) Frequent Communication Supervision: frequent communication between the supervising occupational therapist(s) and occupational therapy assistant including, but not limited to, communication by electronic/communications technology methods, written report, and conference, including review of progress of clients assigned, plus

(ii) Interactive Supervision: interactive supervision during which the occupational therapist, who is physically present with the occupational therapy assistant, directly observes the occupational therapy assistant providing services with one or more clients.

Figure: 40 TAC §373.3(b)(2)(F)(ii)

(3) The occupational therapy assistant must include the name of a supervising OT in each intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the client's intervention at the time of the provision of services. If this requirement is not met, the occupational therapy assistant may not provide services.

[(b) Supervision of a full time employed occupational therapy assistant by the occupational therapist(s) in all settings includes:]

[(1) A minimum of six hours a month of frequent communication between the supervising occupational therapist(s) and the occupational therapy assistant(s) by telephone, written report, email, conference etc., including review of progress of patient's/client's assigned, plus]

[(2) A minimum of two hours of supervision a month of face-to-face, real time interaction with the occupational therapist(s) observing the occupational therapy assistant providing services with patients/clients-]

[(3) These hours shall be documented on a Supervision Log for each employer. The occupational therapist(s) or employer may request a copy of the Supervision Log. The Supervision Log is kept by the occupational therapy assistant and signed by occupational therapist(s) when supervision is given-]

[(4) All the occupational therapist(s), whether working full time, PRN or part-time, who delegate to the occupational therapy assistant, must be participating in the supervision time; whether on a rotational or shared basis-]

[(e) Occupational therapy assistants working part-time or less than a full month within a given month may pro-rate these hours, but shall document no less than four hours of supervision per month, one hour of which includes face-to-face, real time interaction by the occupational therapist(s) observing the occupational therapy assistant providing services with patients/clients-]

[(d) Those months where the occupational therapy assistant licensee does not work as a occupational therapy assistant, he or she shall write N/A in the Supervision Log for that month.]

[(e) Occupational therapy assistants with more than one employer must have a supervisor at each job whose name is on file with the board and must receive supervision by an occupational therapist(s), as outlined for part-time employment in this section. Occupational therapy assistants who work for more than one employer must submit the name and license number at least one OT at each employer, though any of the occupational therapist(s) at the employer may supervise.]

[(f) The occupational therapy assistant must include the name of the supervising OT in each patient's intervention note. This may not necessarily be the occupational therapist who wrote the plan of care, but an occupational therapist who is readily available to answer questions about the patient's/client's intervention.]

[(g) If the occupational therapy assistant has no occupational therapist's name to write in their notes; or available to call, the occupational therapy assistant cannot provide OT services.]

[(h) Occupational therapy assistants' Supervision Logs are subject to audit by the board.]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 18, 2015.

TRD-201501799

John P. Mallne

Executive Director

Texas Board of Occupational Therapy Examiners

Earliest possible date of adoption: June 28, 2015

For further information, please call: (512) 305-6900

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Figure: 40 TAC §373.3(b)(2)(F)(ii)

OTA Required Supervision Hours		
OTAs working 128 or more hours during a given month:	OTAs working between 70-127 hours during a given month:	OTAs working 69 or fewer hours during a given month:
6 hours of frequent communication supervision	3 hours of frequent communication supervision	2 hours of frequent communication supervision
2 hours of interactive supervision	1 hour of interactive supervision	1 hour of interactive supervision